

Decision

Filed: May 21, 2014

State of Louisiana
Civil Service Commission

Docket No. S-17861

Errol Lazard

Versus

Orleans Levee District

Rule(s): 12.7; 12.8
Topic(s): Dismissal; sufficiency of pre-disciplinary and disciplinary letters

Appearances: Floyd J. Falcon, Jr., representing Mr. Lazard
Henry P. Julien, Jr., representing Orleans Levee District

Statement of the Appeal

Errol Lazard was employed by the Orleans Levee District (OLD) as a Trades Apprentice, with permanent status. By a pre-disciplinary letter dated January 9, 2014, OLD proposed dismissing Mr. Lazard from his position for a violation of the agency's substance and alcohol abuse policy. By a disciplinary letter dated January 21, 2014, OLD dismissed Mr. Lazard effective that day.

On January 20, 2014, Mr. Lazard appealed his dismissal. As relief, he requests rescission of the disciplinary action, back pay, and attorney's fees.

On March 7, 2014, I issued a notice to OLD questioning the sufficiency of the pre-disciplinary and disciplinary letters it gave to Mr. Lazard. I gave OLD fifteen (15) calendar days from the date of the notice to show cause in writing why I should not summarily grant this appeal due to the defects noticed.

OLD responded to my notice on March 20, 2014. In its response, OLD claims that it gave Mr. Lazard specific and detailed reasons for the disciplinary action. OLD contends that its policy clearly states that it is against OLD policy for an employee to be under the influence of alcohol or illegal drugs while at work or whenever in an OLD vehicle. OLD attached statements from employees, its policy and the results from an alcohol test to its response.

On March 26, 2014, and April 3, 2014, Mr. Lazard responded in writing to OLD's March 20, 2014 response. Mr. Lazard notes that OLD provided a lot of underlying facts in response to my notice, but these facts were not included in the January 9, 2014 pre-disciplinary letter and the January 21, 2014 dismissal letter. Mr. Lazard also contends that OLD is now attempting to expand the charges against him and that his conduct as alleged by OLD was not in violation of agency policy.

Based on a review of the record and pursuant to Article X, § 12(A) of the Louisiana Constitution of 1974, as amended, I reach the following conclusions.

Discussion and Conclusions of Law

Civil Service Rule (CSR) 12.7 requires an appointing authority to give a permanent employee oral or written notice of a proposed disciplinary action, the factual basis for and a description of the evidence supporting it, and a reasonable opportunity to respond. OLD attempted to comply with CSR 12.7 by giving Mr. Lazard the January 9, 2014 pre-disciplinary letter.

CSR 12.8 requires an appointing authority to notify a permanent employee in writing when disciplinary action is being imposed. The disciplinary letter must state the detailed factual basis for the action being taken. This requirement ensures that the agency apprises the employee of the charges against him, enables him to prepare a defense, and limits any subsequent proceedings to the stated reasons. *University of New Orleans v. Pepitune*, 460 So.2d 1191 (La.App. 1 Cir. 1984). OLD attempted to comply with CSR 12.8 by giving Mr. Lazard the January 21, 2014 dismissal letter.

In both the pre-disciplinary and dismissal letters, OLD stated the charges against Mr. Lazard, in their entirety, as follows: "On Tuesday, January 7, 2014 you reported to work in violation of the Orleans Levee District Substance and Alcohol Abuse Policy and the Orleans Levee District rules and Regulations. You were observed and questioned by the supervisors at which time you notified them that you had been drinking alcohol the night before while watching the football game." The employee statements, alcohol test results, and agency policy provided to me by OLD in response to my March 7, 2014 notice were not attached to the pre-disciplinary and dismissal letters, and thus are irrelevant to my analysis of the sufficiency of those letters under the Civil Service Rules.

OLD's statement that Mr. Lazard reported to work in violation of agency rules and policy is a conclusion. The only facts alleged by OLD in support of this conclusion are that he was observed and questioned by his supervisors, and that he told them that he had consumed alcohol the night before. Glaringly absent are any factual allegations that he appeared intoxicated, smelled of alcohol, was unsteady on his feet, slurred his words, or failed an alcohol test. Moreover, OLD failed to explain how Mr. Lazard's drinking alcohol the night before violated its policy and employee rules. In view of the foregoing, I conclude that the pre-disciplinary and dismissal letters simply do not contain the factual detail and specificity required by CSR 12.7 and 12.8.

Accordingly, I hereby summarily grant this appeal. The dismissal is reversed, and all documents concerning it shall be removed from Mr. Lazard's personnel file. I further order that OLD pay Mr. Lazard back wages, with legal interest.

As to the issue of attorney's fees, the Commission has ruled that attorney's fees are to be granted when the action taken by the agency is unreasonable. *Appeal of Alexander*, CSC Docket No. S-8937. I find OLD's failure to comply with CSR 12.7 and CSR 12.8 to be unreasonable; therefore, I award attorney's fees in the amount of \$1000.00 to Mr. Lazard. The check for attorney's fees shall be made payable jointly to Mr. Lazard and his counsel of record, Floyd J. Falcon, Jr.

Roxie F. Goynes
Civil Service Commission Referee